

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

SECOND APPEAL NO: 205 OF 2019

Appeal under section 100 of C.P.C against the Judgment and Decree Dated 11.06.2019 made in A.S.No.3 of 2017 on the file of the Court of the Principal District Judge, Warangal, preferred against the Judgment and Decree passed in O.S.No.1312 of 2008 dated 28/11/2016 on the file of the Court of the Principal Junior Civil Judge Warangal.

Between:

Allam Upendra, w/o late Nagaiah, aged 73 years, Occup., house hold, r/o 3-251,
Bheemaram village, Hasanparthy Mandal, Warangal District.

...Plaintiff/Appellant/APPELLANT

AND

V. Ramachader Rao, S/o late Ranga Rao aged 57 years, Occup., business r/o
H.No. 2-16, Bheemaram village, Hasanparthy Mandal, Warangal District.

...Defendant/Respondent/RESPONDENT

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to allow the instant amendment petition and permit the petitioner herein to carryout the proposed amendments in memorandum of appeal which is mentioned in Affidavit.

Counsel for the Appellant : Mr. Pitta Srinivasa Reddy

Counsel for the Respondent : Mr. Yellapragada Srinivasa Murthy

The Court delivered the following:

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

SECOND APPEAL No. 205 OF 2019

JUDGMENT:

I have heard Mr.Pitta Srinivasa Reddy, learned counsel for the appellant/plaintiff, on admission and also heard Mr.Yellapragada Srinivasa Murthy, learned counsel for the respondent/defendant.

2. This appeal is filed assailing the decree and judgment dated 11.06.2019 in A.S.No.3 of 2017 passed by the learned Principal District Judge, Warangal, whereby the decree and judgment dated 28.11.2016 in O.S.No.1312 of 2008 on the file of learned Principal Junior Civil Judge, Warangal, has been affirmed.

3. *The appellant as plaintiff filed the suit vide O.S.No.1312 of 2008 seeking perpetual injunction against the respondent/defendant over the suit schedule property i.e. open land admeasuring 82 square yards adjacent to House bearing No.1-42 in Sy.Nos.204/E and 205, situated at Bheemaram of Ramaram, Hasanparthy Mandal, Warangal District (for short 'the subject property').*

4. The case of the appellant/plaintiff (hereinafter 'the plaintiff') is that he had purchased the piece of land admeasuring 82 square

yards joining to his house under a deed dated 01.05.1982 and in unison he paid Rs.200/- as an advance and later paid remaining sale consideration and his vendor delivered possession of the subject property. Since then, the entire land is in his possession and enjoyment. Further, the plaintiff constructed residential house, for which the Grampanchayath assigned House No.1-42 and he is paying property tax. The respondent/defendant (hereinafter 'the defendant') without any right or interest over the subject property interfering with his possession. Thus, the suit for perpetual injunction.

5. The defendant contested that, the original owner Ranga Rao had gifted 845 square yards of land including the subject property under registered gift deed in 1984. Since then, he is in possession and enjoyment of the property. However, the plaintiff with *mala fide* intention created the document styling simple sale deed and claiming title and possession over the property, which is obviously unsustainable under law.

6. The trial Court on considering the materials held that the plaintiff failed to prove possession and enjoyment over the subject property, hence, declined the suit claim.

7. Aggrieved thereby the plaintiff preferred appeal *vide* A.S.No.3 of 2017. On re-appreciation, the first appellate Court also recorded similar conclusions and dismissed the appeal suit. Challenging the first appellate Court's judgment, the plaintiff filed this Second Appeal.
8. Learned counsel for the plaintiff would submit that the plaintiff had purchased the subject property from the original owner and payment of consideration was also acknowledged under receipts. The plaintiff constructed house, obtained electricity connection and regularly paying the tax to the Grampanchayath and these aspects are proofs of his possession over the subject property. However, the Courts below disregarded the documents and the oral testimonies placed on behalf of the plaintiff and erred in concluding that the plaintiff is not in possession of the subject property. On the other hand, contended that the gift settlement deed and other documents filed by the defendant are created to defeat his interest. Thus, prayed for reconsideration and intervention.
9. During pendency, the plaintiff filed a Memo along with construction permission and approved plan dated 11.05.2009 and vehemently pleaded that these documents are establishing ~~his~~ possession over the subject property. He also placed the
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authorities between *K.R.Subrahmanyam and another v. A.Raja Reddy*¹ and *Kaheeda Moin and others v. Md.Iqbal Ali and others*² of the erstwhile High Court of Andhra Pradesh and pleaded that the admissibility of unregistered document for collateral purpose and proving possession has been approved, thus, basing on the materials placed on record, the suit claim to the extent of injunction should have been allowed.

10. Per contra, learned counsel for the defendant pleaded that the Courts below have properly considered the oral and documentary evidence placed by the plaintiff and in the absence of any particular material proving possession over the subject property, the suit was rightly dismissed. He further contested that bringing documents on to record by way of Memo is improper and against the procedure. Further, the documents filed with the Memo are of the year, 2009, which are after filing the suit and the plaintiff has to prove possession over the subject property by the date of filing suit. Thus, on any respect, the documents placed along with Memo cannot be looked into, as they were not placed before the trial or first appellate Courts.

¹ 2002 (5) ALT 404 (S.B.)

² 1998 (5) ALD 633

11. I have considered the submissions of the learned counsel and perused the record.

12. In this position, the aspect for determination would be whether the Courts below have considered the oral and documentary evidence in proper perspective in arriving at the conclusions and whether any substantial question of law is made out for consideration.

13. As per the plaintiff, he had purchased Ac.0-06 gts., of land in Sy.No.204/E of Bheemaram Village and to make it a contiguous plot, he purchased 82 square yards of land from its owner V.Ranga Rao. Admittedly, the sale transaction was under simple sale deed. It is settled position that until the essential requirements under Stamps and Registration Act are complied, transmission of title will not be complete. It is also admitted that the subject property is vacant site abutting the house of the plaintiff.

14. At hearing, learned counsel for the plaintiff has asserted that during the pendency of suit they have raised shed. Howsoever, there is no materia to show such construction or the plaintiff's possession over it. Thus, the subject property has to be considered as open land abutting the house of the plaintiff.

15. Howsoever, before the trial Court, to establish his possession over the subject property, the plaintiff had placed original pattadar pass book and title deed/Exs.A-1 and A-2, Pahani/Ex.A-3, demand notice of Grampanchayath/Ex.A-7, receipt of electricity bill/Ex.A-11 and also electricity bill/Ex.A-12. All these documents are pertaining to the land of plaintiff in Sy.No.204/E and the house constructed by him therein and none of them in any way establishing the possession of the plaintiff over the subject property i.e. 82 square yards.

16. Further, the plaintiff filed two documents by way of Memo in this Appeal. As rightly pointed out by the learned counsel for the defendant that those documents are of the year, 2009, which is after filing of the suit. Additionally, there is no explanation as to why the plaintiff could not place these documents either before trial or first appellate Courts. That apart, filing of Memo to bring in the documents on to record is not proper, as it is contravening the procedure as prescribed under Order XLI Rule 27 of the Civil Procedure Code, 1908. Nonetheless, the appellant has not even stated a word explaining the essential requirements given in the provision. Even otherwise, the documents are pertaining to the construction within the undisputed premises of the plaintiff.

Therefore, even by these documents, the fact of possession over the subject property is not being reflected.

17. In the above noted factual position and the documents filed by the plaintiff, the irresistible conclusion that can be drawn is, the plaintiff failed to prove his possession over the subject property.

18. The well settled position is that in the absence of any particular and legally acceptable material establishing possession, the possession has to be presumed basing on the title, in other words, the party with title over the disputed property/subject property, shall be held as in possession. This proposition has been fortified by the Hon'ble Apex Court in the authority of **Anathula Sudhakar v. P.Buchi Reddy (dead) by LRs and others**³.

19. In this context, the plaintiff had admitted that one V.Ranga Rao is the owner of the subject property and he purchased the same under simple sale deed. On the other hand, the defendant is claiming title over the subject property under registered gift deed executed by the owner of the subject property i.e. V.Ranga Rao. This situation is making out legal title in favour of the defendant. That being the actuality and in the absence of any evidence

³ (2008) 4 Supreme Court Cases 594

showing plaintiff's possession over the subject property, it shall be held that the Courts below have considered the facts in law in proper perspective in determining the suit claim. Therefore, no impropriety is found in the impugned judgment, much less, any substantial question of law for consideration in the Second Appeal. Thus, this appeal fails on merit and is liable to be dismissed.

20. Accordingly, the Second Appeal is dismissed. No order as to costs.

As a sequel, pending miscellaneous applications, if any, shall

stand closed.

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Sd/- K. SAILESHI
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Principal District Judge, Warangal.(With records, if any)
2. The Principal Junior Civil Judge Warangal.
3. One CC to Mr. Pitta Srinivasa Reddy Advocate [OPUC]
4. One CC to Mr. Yellapragada Srinivasa Murthy Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:31/12/2024

JUDGMENT

SA.No.205 of 2019



DISMISSING THE S.A.

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11/03/25
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